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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-747

WALTER J. FLECK, et al.,

Appellants,

vs.

WARREN SPANNAUS, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

BRIEF OF APPELLEES

OPINIONS BELOW

The opinion of the three-judge federal district court is not reported in an official reporter; it is contained in the joint appendix herein at A-67. The opinions of the District Court for the District of Minnesota and the Minnesota Supreme Court concerning related issues of the instant case are, respectively, reported at 412 F.Supp. 366 (D. Minn. 1976) and —— Minn. ——, 251 N.W.2d 334 (1977).

JURISDICTION

The amended judgment of the three-judge federal district court was entered on September 21, 1977. The plaintiff filed a Notice of Appeal to this Court on September 27, 1977. The Jurisdictional Statement was filed on November 25, 1977, and this Court noted probable jurisdiction on January 23, 1978. This Court's jurisdiction rests on 28 U.S.C. § 1253.

CONSTITUTIONAL PROVISION INVOLVED

U. S. Const. art. I, § 10, cl. 1 provides, in relevant part:

> No state shall . . . pass any . . . law impairing the obligation of contracts . . .

STATUTE INVOLVED

The Minnesota Private Pension Benefits Protection Act, Minn. Stat. ch. 181B (1974) (hereinafter the Minnesota Pension Act) is set forth in the Appendix at A-90.

QUESTION PRESENTED

Whether the lower court was correct in holding that the Minnesota Pension Act, as it applies to the employees pension plan of the Allied Structural Steel Company, is valid under the Contract Clause of the United States Constitution.

STATEMENT

For many years Allied Structural Steel Company ("Allied") maintained a Minnesota office which monitored the construction of steel buildings and bridges in 30 states.[1] *Fleck v. Spannaus*, 412 F. Supp. 366, 368 (D. Minn. 1976). In December, 1974, Allied commenced the instant action against appellees, Warren Spannaus, the Attorney General of the State of Minnesota, and other Minnesota state officials [2] charged with enforcing the Minnesota Private Pension Benefits Protection Act ("Minnesota Pension Act"), Minn. Stat. ch. 181B (1976).

Allied sought summary judgment from a three-judge federal district court declaring that the Minnesota Pension Act was invalid under various state law theories and on constitutional grounds. Before issuing its decision on the constitutional issues, the three-judge court certified questions of state law [3] to the Minnesota Supreme Court and appointed a special master to make certain findings of fact.[4] The Minnesota Su-

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[1] By its Order of August 5, 1976, the three-judge federal district court herein ruled that all three individual plaintiffs (Fleck, Hamler and Richert) lacked standing to challenge the constitutionality of the Minnesota Pension Act and, therefore, dismissed them from the lawsuit. Consequently, Allied Steel now is the only real party in interest as appellant. It does not raise the validity of that dismissal before this Court.

[2] Appellees will be referred to as the State of Minnesota hereinafter.

[3] *See* Minn. Stat. § 181B.17 (1976).

[4] *See* unreported lower court opinion contained in Appendix (hereinafter abbreviated as "App.").

preme Court subsequently ruled that the Minnesota Pension Act was applicable to Allied Steel. *Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334 (1977). In reaching that conclusion, the court also held that the Federal Employee Retirement Income Security Act of 1974 (ERISA) was not effective at the time of Allied's Minnesota office closing and, in fact, its passage was in doubt at the time of the enactment of the Minnesota statute. 251 N.W.2d at 338.

On April 7, 1977, the Special Master submitted his Findings of Fact to the lower court.[5] He found that as of June 30, 1974, Allied Steel's salaried employees pension plan had a total net deficiency of $295,341 as to all employees who were accruing pension credits under its own plan. He also concluded that there had been no earmarking of contributions to the pension fund for specific employees and that the possibility of closure of its Minnesota office was not one of the actuarial assumptions which had been used in developing Allied Steel's pension plan.[6]

Subsequently the district court held on September 2, 1977, that the Minnesota Pension Act was constitutional under the Contract and Commerce Clauses of the United States Constitution and under the Due Process and Equal Protection Clauses of the Constitution's Fourteenth Amendment.[7] In seeking to appeal that decision, Allied now asserts as the sole basis for its appeal that the Minnesota Pension Act violates the Contract Clause, U. S. Const. art. I, § 10, cl. 1.

The Minnesota Pension Act was enacted on April 9, 1974. It protects accrued pension benefits of any Minnesota "employee" with ten or more years of employment by an employer

[5] All parties have stipulated to the Findings of Fact pursuant to Rule 53(e)(4) of the Federal Rules of Civil Procedure.
[6] Special Master's Findings of Fact at 3-7; *see also* App. at A-73.
[7] App. at A-85.

maintaining a "place of employment" within Minnesota.[8] This protection is provided by requiring a Minnesota employer who terminates a Minnesota place of employment or pension plan to pay a pension funding charge if such action results in the forfeiture of employee pension benefits. The pension funding charge, which is fundamentally an amount equal to benefits that the qualified employees accrued under the pension plan, is paid by the employer's purchase of prepaid, deferred annuities payable to the protected Minnesota employees upon retirement age as set forth in the pension plan or to the employees' beneficiaries upon the employees' death. Minn. Stat. § 181B.12 (1976).[9]

The Allied Steel Salaried Employees' Pension Plan was established on August 7, 1963, and has been in existence continuously since that date. The plan is for the benefit of salaried employees, none of whom are unionized. It has been qualified as a single-employer plan under the Internal Revenue Code § 401.[10] This qualification enables Allied to treat its contributions to the plan as deductions from its income tax obligations. The same deductions are permitted under Minnesota tax law. Minn. Stat. § 290.26 (1976). *See also*, I.R.C. § 404.

Under the pension plan, an employee is entitled to full vesting of his pension for early retirement purposes if: 1) he has worked fifteen continuous years and has attained the age of 60; or 2) after he has attained the age of 55 and has worked

[8] For definitions of the relevant terms used in the Minnesota Pension Act, *see* Minn. Stat. § 181B.02 (1976), App. at A-90-A-95.
[9] The Minnesota Pension Act has been preempted by ERISA, 29 U.S.C. § 1144(a); however, the preemption did not take effect until January 1, 1975, and does not apply to any cause of action accruing prior to that date. Fleck v. Spannaus, 412 F. Supp. 366 (D. Minn. 1976); Fleck v. Spannaus, — Minn. —, 251 N.W.2d 354 (1977).
[10] Fleck v. Spannaus, 412 F. Supp. 366, 368 (D. Minn. 1976).

20 continuous years, or a lesser number of continuous years of service, which when added to his age equals the sum of 75; or 3) before reaching age 55, he has at least 25 or more years of continuous service such that the sum of his age and continuous years of service equal 80. None of the employees with benefits fully vested under the Allied pension plan is at issue here.

On July 31, 1974, Allied ceased operations in Minnesota and eleven employees at the division were terminated.[11] At least nine of these employees had been employed by Allied Steel for more than ten years prior to their termination but had not reached retirement age under the Pension Plan. Since mandatory ten-year vesting under ERISA was not effective until January 1, 1976, the nine Minnesota employees do not receive any accrued benefits under the Pension Plan or through federal insurance under ERISA. The only protection of accrued pension benefits available to the Minnesota employees is that protection provided by the Minnesota Pension Act. *See Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334, 338-39 (1977).

In September, 1974, pursuant to the Minnesota Pension Act, Allied notified the Minnesota Commissioner of Labor and Industry of its intention to cease the operation of its place of employment in Minnesota. Thereafter, when it became apparent that the State of Minnesota intended to enforce the Minnesota Pension Act and the funding charge thereunder against Allied,[12] the company commenced an action for declaratory and injunctive relief. That action has led to Allied's appeal to this Court.

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[11] This termination was begun *subsequent* to the effective date of the Minnesota Pension Act.

[12] On August 18, 1975, the State of Minnesota notified Allied of the assessment of a pension funding charge of $185,751. At Allied Steel's request, an administrative hearing was granted to determine the accuracy of the funding charge. This hearing has been held in abeyance pending the outcome of the litigation.

SUMMARY OF ARGUMENT

The Minnesota Pension Act is a valid police power enactment which is in accord with the principles enunciated in *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977): *Home Building & Loan Ass'n. v. Blaisdell*, 290 U.S. 398 (1934) and other modern Contract Clause cases. That is, the statute is directed to obvious public purposes and, under any appropriate degree of deference to Minnesota legislative judgments, is aimed at achieving those purposes in a necessary and reasonable manner.

Unlike the New Jersey statute invalidated in the *United States Trust* case, the Minnesota Pension Act constitutes a broad measure regulating a wide range of private agreements and conduct. It is designed to protect employee pension benefits which have accrued for at least 10 years with one employer. In turn, this protection is designed to relieve the employees/retirees of severe economic hardships due to the unexpected loss of pension rights, and to insulate Minnesota taxpayers from potentially burdensome health and welfare costs. The obvious relationship of inadequate and forfeited private pensions to the public health and welfare is well documented. *See Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334, 338 (1977); C. Siegfried, "The Role of Private Pensions" in *Private Pensions and the Public Interest* (1970); and M. Bernstein, *Employee Pension Rights When Plants Shut Down: Problems and Some Proposals*, 76 Harv. L. Rev. 952 (1962).

Again, in contrast to the statute at issue in *United States Trust* (intended exclusively to apply to the repeal of only one prior public contract to which the state was a party), the Minnesota statute is both necessary and reasonable. That is, in the circumstances of this case, the statute's protection of substan-

tial accrued pension benefits which would otherwise be forfeited due to terminations of pension plans or offices is necessary and reasonably related to its means for achieving such objectives. Essentially those means are encompassed in the statutory requirement that, if an employer such as Allied closes a Minnesota office or terminates its employee pension plan, it is liable for a pension funding charge. That charge is equal to the amount of pension benefits accrued by employees with at least 10 years' service, to the extent the employer's pension fund is inadequate to pay such benefits. Minn. Stat. §§ 181B.-03-.06 (1976). *Compare Home Building & Loan Ass'n. v. Blaisdell*, 290 U.S. 398, 438 (1934) (upheld statute on finding, in part, that the measures for achieving a legitimate purpose are reasonable and appropriate) and *Stephenson v. Binford*, 287 U.S. 251, 272 (1932) (test of reasonableness is whether, in sound legislative judgment, there is actual relation between a statute's means and ends).

Finally, any retroactive effect of the Minnesota Pension Act upon Allied is permissible under modern Contract Clause cases and, specifically, *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976).

ARGUMENT

I. UNDER THE PRINCIPLES OF UNITED STATES TRUST AND OTHER CONTRACT CLAUSE CASES, THE LOWER COURT PROPERLY CONCLUDED THAT THE MINNESOTA PENSION ACT IS A NECESSARY AND REASONABLE ENACTMENT SERVING LEGITIMATE PUBLIC PURPOSES.

Although Allied initially raised several claims against the Minnesota Pension Act,[13] it now rests its appeal solely on the allegation that the statute unconstitutionally impairs its contract rights under its own employees pension plan, in violation of U.S. Const. art. I, § 10. Specifically, Allied argues [14] that: 1) the provisions of the company's pension plan which delay the vesting of employee pension benefits until 20 years of service are allegedly impaired by the act's requirement of vesting after 10 years; [15] and 2) the provision of the pension plan limiting the liability for pension benefits only to the amount of money in the trust fund (even if underfunded) is

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[13] *See* App. at A-11-A-12.

[14] *See* Appellant's Brief at 12-13 and lower court opinion, App. at A-75, n. 5. The contract impairments alleged by Allied are not totally clear and consistent. Before the lower court it argued that its employment and trust contracts were impaired, despite the fact that the employees had no control over the latter agreements. Yet its brief to this Court indicates that its right to terminate the pension plan also is impaired. In that regard, the State emphasizes two key points: 1) the Act does not prevent Allied from terminating its pension plan; and 2) at the time the instant action was commenced the pension plan, in fact, was not terminated; only Allied's Minnesota office was closed.

[15] Minn. Stat. §§ 181B.03-.06 (1976) provide that when an employer in the *future* terminates a place of employment or pension plan, it owes a pension funding charge equal to the present value of pension benefits accrued by employees with *10 or more years of service covered by the pension plan* to the extent those benefits would be forfeited by such termination.

allegedly impaired by the Act's imposition of liability on the company for the balance of accrued benefits.[16]

The lower court did not question that the foregoing effects of the Minnesota Pension Act might constitute an impairment of Allied's contract rights. But, it sustained the validity of the statute by noting properly that only impairments which are either unreasonable or unnecessary or not related to a valid public purpose are unconstitutional. The court based its decision on the principles enunciated by this Court in *United States Trust Co. v. State of New Jersey*, 431 U.S. 1 (1977) and other leading Contract Clause cases.[17]

Although the ultimate standards for reviewing statutes in Contract Clause challenges have not changed much in this century, the lower court correctly noted that the most current definitive statement of those standards is contained in the *United States Trust* case. The formulation of the Contract Clause standards is as follows: even if a statute impairs contract obligations, it will be upheld if it serves a legitimate *public purpose* and does so in a *necessary* and *reasonable* manner. *United States Trust* at 15-16, 21-23; *El Paso v. Simmons*, 379

[16] Minn. Stat. §§ 181.03-.06, .11-.12 (1976) make the employer liable for the payment of those pension benefits for which the pension fund is inadequate. This payment must be made through the purchase of a prepaid deferred annuity, which the Special Master herein calculated to cost $114,117.93 to $185,751. *See* See Special Master's Findings of Fact at 7. The lack of a precise amount is attributable to various interpretations of Allied's pension plan and the cost of annuities at different times. *Id.* The Special Master also found that, under its own pension plan, Allied's pension fund was underfunded by $295,341 at the time its Minnesota office was closed. *Id.* at 3.

[17] Contrary to Allied's assertions in its Brief at 8, the lower court decision did not turn solely on the question of whether Allied's contracts were "public" or "private" in nature. As explained in more detail hereinafter, the lower court merely noted that such a distinction had some relevance in reviewing a statute's necessity and reasonableness. Moreover, the decision below rested upon the traditional Contract Clause tests as reflected in the cases supporting the United States Trust decision.

U.S. 497 (1965); *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934); and *Stephenson v. Binford*, 287 U.S. 251 (1932).

The statute in *United States Trust* was struck down because this Court concluded that, even though it might be directed at a laudable purpose, it was unnecessary and unreasonable. In that case a 1962 statutory covenant between New York and New Jersey and certain bondholders had expressly provided that none of the revenues or reserves which were security for Port Authority bonds would be used to finance certain rail transit expenditures without the bondholders' consent. A 1974 New Jersey repealer statute [18] allowed the states to apply revenues from the pre-existing bond securities to the construction of the previously prohibited transit facilities. This Court concluded that the impairment of the bondholders' rights under the 1962 covenant was unconstitutional under the Contract Clause. In reaching that conclusion this Court expressly relied on its decisions in *El Paso v. Simmons*, 379 U.S. 497 (1965) and *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934), and the tests enunciated in those cases for resolving Contract Clause challenges. 431 U.S. at 15-16.

In the *United States Trust* case the invalidated statute obviously was directed exclusively at *repealing* one prior statutory contract to which the state itself was a party. In contrast, the Minnesota Pension Act is a general enactment regulating a wide range of subjects (including more than just contracts) in the area of private pensions, an area where the number of broken pension agreements and shockingly underfunded pension funds are legion. *See* C. Siegfried, "The Role of Private Pensions" in *Private Pensions and the Public Interest*, 7, 9 *et*

[18] New York had also passed a statute similar to the 1974 New Jersey law.

seq. (1970); M. Bernstein, *Employee Pension Rights When Plants Shut Down: Problems and Some Proposals*, 76 Harv. L. Rev. 952 (1962).

As amplified by the following discussion, the foregoing points show that the lower court's application of this Court's traditional Contract Clause tests was correct.

A. The Act Serves Legitimate Public Purposes

Allied does not seriously dispute the fact that the Minnesota Pension Act is directed to valid public purposes. Its only apparent claim regarding this aspect of the Contract Clause test is its assertion that the statute aids only a small portion of Minnesotans, *i.e.* merely senior citizens.[19]

This argument fails in several respects. First, Allied offers no authority for the rather novel proposition that the legitimacy of a police power statute's public purpose is measured by the precise number of persons served by the statute. Second, Allied cannot cite any evidence in the record of the instant case supporting its implication that only a small number of persons benefit from the statute.[20] In addition, as the lower court noted, it is well established that a police power statute is not rendered invalid simply because it does not address all problems of all citizens in a particular area. *See* lower court opinion, App. at A-78.

At any rate, even if only a small percentage of Minnesota's population *directly* benefited from the Act, the statute nonetheless qualifies as a major police power enactment serving the state's broad general health and welfare. In addition to

[19] Brief of Appellant at 17-18.

[20] Allied's references to the alleged predominance of agriculture in Minnesota and *national* employment statistics are based not on the record but only on assumptions and speculations that should be rejected as improper. *See* Brief of Appellant at 18.

the thousands of employees with pension rights potentially affected by the Minnesota Pension Act, there are thousands of other Minnesota taxpayers who would have benefited by the savings in state health and welfare costs which could have arisen from the absence or inadequacy of promised pension funds.[21]

The Minnesota Pension Act on its face is directed to the protection of the economic welfare of employees and senior citizens by assuring them the receipt of earned and expected pension benefits and, consequently, falls within the broad scope of the police power of the state of Minnesota.[22] Indeed, the forfeiture of anticipated pensions because of inadequately funded plans is particularly devastating since it generally affects persons at an age when they frequently have no other source of income beyond Social Security and are normally too old or infirm to reenter the labor market. *See* district court opinion, App. at A-76. As a result, the loss of pension income

[21] The Minnesota Pension Act, of course, was preempted as of January 1, 1975, when comparable provisions of ERISA, 29 U.S.C. §§ 1001 *et seq.* (1974) became effective. *See* Fleck v. Spannaus, —— Minn. ——, 251 N.W.2d 334 (1976). The significance of Allied's statement that the Minnesota Pension Act was passed a few months before the enactment of ERISA is not clear. *See* Appellant's Brief at 4. As observed by Bernstein, *supra*, the failures of companies to provide adequate pensions were well known and debated by Congress for many years. Certainly, the Minnesota legislature cannot be faulted for declining to rely solely on *possible* federal legislation with unspecified ultimate protections at an unknown future date; instead, it directly addressed these failures and problems through the Minnesota Pension Act. Indeed, the Minnesota Supreme Court observed in Fleck, *supra*., that at the time of the Act's passage, both the provisions and passage of the federal legislation were uncertain. *Id.* at 338.

[22] *See, e.g.*, the committee reports supporting the Congressional bills leading to the enactment of ERISA, S. Rep. No. 93-383, 93rd Cong. (1974), Pension Reform Act, U.S. Code Cong. and Adm. News 508, 516 (1974); H. Rep. No. 93-807, 93rd Cong., 2d Sess. (1974), Pension Reform Act, U.S. Code Cong. and Admin. News 288, 294 (1974); Hearings on Private Welfare and Pension Plans, Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 92nd Cong., 2d Sess. 736, 783 (June 3, 1972).

can result in the inability to maintain adequate housing, clothing or nutrition.[23]

The state interest in assuring adequate income to the elderly has been recognized by this Court. *See Helvering v. Davis*, 301 U.S. 619 (1937); *see also Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495 (1937); *New York Central R.R. v. White*, 243 U.S. 188 (1917); and *Mountain Timber Co. v. Washington*, 243 U.S. 219 (1917). The public purposes of the Minnesota Pension Act, in particular, have been noted specifically by the Minnesota Supreme Court during another stage of the proceedings of the instant case. *Fleck v. Spannaus*, —— Minn. ——, 251 N.W.2d 334, 338-340 (1977).

The public purposes and importance of the Minnesota Pension Act, therefore, are manifest. Allied's comparison of the purpose of the Act to the purpose of the New Jersey statute invalidated in *United States Trust* is inappropriate, since this Court ruled against the latter statute substantially because it was found to violate other facets of the Contract Clause test, *i.e.* it was unnecessary and unreasonable. In contrast, the Minnesota Pension Act not only serves valid public purposes but, as will become more clear hereinafter, it also is both necessary and reasonable.

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[23] Furthermore, the mass forfeiture of retirement benefits that the Minnesota Pension Act seeks to prevent can result in adverse consequences for the surrounding community through reduced purchasing power and an increased demand for welfare funds and related public services. As stated before, therefore, a great many more persons than simply the elderly would benefit from the statute.

B. The Purposes Of The Minnesota Pension Act Are Achieved In A Necessary And Reasonable Manner.

1. Introduction.

Much of Allied's argument[24] is devoted to persuading this Court that the lower court's decision rested solely on the allegedly "new" principle that legislatures are permitted to impair private contracts more easily than public contracts (*i.e.* those to which a state is a party). According to Allied, this distinction by the lower court constitutes a misinterpretation of this Court's decision in *United States Trust*.[25] However, such an argument is an oversimplification and reveals a misunderstanding of the lower court's opinion.

Allied's misunderstanding is disclosed by the fact that the lower court made it unmistakably clear that it considered the *United States Trust* decision to constitute a reaffirmation of prior Contract Clause cases.[26] For example, the lower court expressly noted that *United States Trust* "ultimately" stood for the proposition that statutory impairments "can be sustained only if reasonable and necessary to serve important purposes of the state."[27] The court also expressly relied[28] upon this Court's statement in *United States Trust* that "complete deference" to a legislative determination of reasonableness and necessity is not appropriate. *United States Trust*, *supra*, at 25.

The reasoning of the lower court further illustrates the weakness of Allied's argument on this point. After passing upon the purposes of the Minnesota Pension Act, the lower court analyzed the statute further by reviewing the *nature* of the

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[24] Appellant's Brief at 8-11.
[25] *Id.*
[26] Lower court opinion at App., A-69.
[27] *Id.* at A-71.
[28] *Id.* at A-70, A-75.

contractual relationship affected in the instant case and the *extent* of the impairment.[29] Both of these issues were reviewed in the course of determining the statute's necessity and reasonableness. The lower court's only reference to a distinction between public and private contracts was in the context of analyzing the *nature* of the contract relationship herein. Thus, that distinction was applied only with respect to one facet of evaluating the issues of reasonableness and necessity. It certainly did not form the sole basis of the lower court's decision.

Moreover, the public-private contract distinction is based in logic and on *United States Trust*, where this Court stated:

> The states must possess broad power to adopt general regulatory measures without being concerned that *private contracts* will be impaired, or even destroyed, as a result. Otherwise, one would be able to obtain immunity from the state regulation by making private contractual arrangements.
>
> . . .
>
> Yet private contracts are not subject to unlimited modification under the police power. . . . As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.
>
> . . .
>
> As with laws impairing *private contracts*, an impairment may be constitutional if it is reasonable and necessary to serve an important public purpose. In applying this standard [to the instant case involving a *public contract*], however, complete deference to a legislative assessment of reasonableness and necessity is not appropriate *because the State's self-interest is at stake.*

431 U.S. at 22, 25 (emphasis added and citations omitted).

[29] *Id.* at A-70.

Furthermore, there is additional express evidence of this Court's acceptance of the distinction between public and private contracts in related cases. In *United States Trust* this Court compared the public and private contracts distinction to the "dual standard" it has applied under the Fifth Amendment in reviewing federal laws which retroactively abrogate the government's obligations under federal bonds to redeem the bonds at specified values. It observed that legislation interdicting private contracts would be viewed with less scrutiny than laws abolishing Congress' own contractual obligations, and that the extent of the limitations on the exercise of a state's reserved police powers to impair contracts depended upon the "nature of the contractual relationship." 431 U.S. at 22-26 and n. 25. *Compare* lower court opinion at App., A-70.

It is logical to apply the reasonable-and-necessary test more strictly in a case where the contractual relationship is public in nature, *i.e.* where the state, as in *United States Trust*, is one of the contracting parties. In such a circumstance it is likely that in enacting a statute which abrogates or impairs its own contracts a state legislature might be motivated more by its own self interest than by the general public welfare. Conversely, states should be granted more deference and flexibility in passing statutes (*e.g.*, the Minnesota Pension Act) which incidentally impair a number of private contractual relationships when such statutes are reasonably directed to a problem of clear public importance.

Where a state law impairs purely private contract rights, it is more likely to be within the realm of legitimate police powers than a law which is arbitrarily directed at a specific public contract. *See Manigault v. Springs*, 199 U.S. 473 (1905); App. at A-70; *Note, The Constitutionality of the New York Municipal Wage Freeze and Debt Moratorium: Resur-*

rection of the Contract Clause, 125 U. Pa. L. Rev. 167, 187-196 (1976).

The New Jersey statute at issue in *United States Trust* is a good example of the need for the public-private contract distinction. In that case a state legislature enacted a law which was directly and exclusively designed to repeal (not merely impair) a prior contract to which that same state was a party.[30] Certainly, there would have been no argument in *United States Trust* that the repealed statutory contract coincidentally "happened to be" within a wide range of contracts affected by a broad enactment.

Allied attempts to confuse the question even further by noting that a New Jersey state court has invalidated another New Jersey law "resembling" the Minnesota Pension Act.[31] *See Raybestos-Manhattan, Inc. v. Glaser*, 144 N.J. Super. 152, 365 A.2d 1 (1976). Allied, however, conveniently ignores the lack of resemblance between the two laws in several critical respects. First, the statute in *Glaser* applied only to employers of 500 or more employees located at one location entirely within New Jersey.[32] Second, because of the fact that the New Jersey statute essentially applied only to one employer (Raybestos), the court struck down the law as special legislation and *not* as a Contract Clause violation. Thus, the statute in

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[30] One of the main reasons for the invalidations of the 1974 New Jersey law was this Court's belief that the mass transit problems to which the 1974 act was directed were clearly foreseeable by the New Jersey legislature prior to and at the time of the 1963 statutory covenant. 431 U.S. at 6-9, 31. It simply is not generally reasonable for a party (*i.e.*, a state) to a public contract to alter or abrogate unilaterally the terms of its own contract when the basis for such changes were known to or foreseeable by that party at the time of entering into the contractural relationship.

[31] Appellant's Brief at 17.

[32] The Minnesota Pension Act applies more broadly to employers of 100 or more employees, only one of whom need be employed within Minnesota. *See* Minn. Stat. § 181B.02, subds. 2 and 3 (1976), at A-90.

Glaser was, in fact, similar to the law at issue in *United States Trust*, in that both statutes were directed exclusively at one employer and one contract.

Contrary to Allied's mischaracterizations, the lower court's application of the public-private contract analysis is both correct and limited merely to the initial determination of the degree of deference to be given legislative judgments regarding a statute's necessity and reasonableness. In the instant case, the Minnesota Pension Act is reasonable and necessary under even a minimal degree of deference to the legislature.

2. The Minnesota Pension Act Is Necessary.

One means for determining the necessity of the Minnesota Pension Act is to measure it against alternative methods for achieving the same public purposes. *See United States Trust*, 431 U.S. at 29-30.

In *United States Trust*, for example, this Court found the 1974 New Jersey repealer statute unnecessary, in part, because the statute's objectives, *i.e.*, reducing automobile use and improving mass transit, could be accomplished by other acceptable means such as imposing state taxes on vehicle miles traveled in the Port Authority area, increased commuter tolls and increased gasoline taxes. 431 U.S. at 30, fns. 28, 29.

As alternatives in the instant case, Allied Steel, citing ERISA, asserts 1) that the Minnesota statute should apply its pension vesting and entitlement requirements only prospectively and 2) permit companies to terminate their pension plans during a grace period before the statute becomes effective. Appellant's Brief at 18-19. But, as the lower court properly noted, these suggestions are not truly alternatives to the valid public purposes for which the Minnesota Pension Act was necessary:

> . . . [T]he Minnesota legislature rejected both of these alternatives because either would have been inconsistent with the Act's central purpose—to assure some measure of retirement income to those affected by present plan[t] closures and plan terminations. Although the legislature might have adopted a less drastic means to accomplish its purpose, the approach it chose is not unreasonable or arbitrary merely because it requires funding to commence from the date of enactment.

Lower court opinion at App., A-79.[33]

The necessity of the Minnesota Pension Act is substantially greater than the need for the statute at issue in *United States Trust*. There, this Court ruled that one reason for holding the statute in question unnecessary under Contract Clause analysis was that the law's *total repeal* of the prior statutory covenant was not essential to its objectives. 431 U.S. at 29-30. The Minnesota Pension Act, however, constitutes a very limited step in dealing with the critical problems caused by inadequately funded pension plans, since it applies only to employers who terminate their places of employment or their pension plans and whose plans are inadequately funded. Thus, the act is designed to prevent the forfeiture of accrued pension benefits by a substantial number of employees. Surely the Minnesota Pension Act not only is far more necessary to its objectives than the statute reviewed in *United States Trust* but also is the only effective method for achieving its demonstrable public purposes.

[33] Furthermore, as indicated in Argument II, *infra*, Allied's contentions that ERISA applies only prospectively are incorrect.

3. The Minnesota Pension Act Is Reasonable.

It is axiomatic that one who challenges the constitutionality of a police power enactment must make a substantial showing of the statute's unreasonableness. *Compare, Usury v. Turner Elkhorm Mining Co.*, 428 U.S. 1 (1976) and *Hadacheck v. Sebastian*, 239 U.S. 394 (1915).[34] A common formulation of the test of reasonableness in Contract Clause cases was expressed by this Court in *Home Building & Loan Assn. v. Blaisdell*, 290 U.S. 398 (1934):

> The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and *the measures taken are reasonable and appropriate to that end.*

290 U.S. at 438 (emphasis added). Similarly, in *Stephenson v. Binford*, 287 U.S. 251, 272 (1932) this Court stated:

> The extent to which . . . they [statutory provisions] conduce to that end, the degree of their efficiency, the closeness of their relation to the end sought . . . are matters addressed to the judgment of the Legislature, . . . *It is enough if it can be seen that in any degree, or under any reasonably conceivable circumstances, there is an actual relation between the* [statute's] *means and the end.*

(Emphasis added.)

[34] Although Hadacheck v. Sebastian involved constitutional issues other than the Contract Clause, it provides good insight into the test of a statute's reasonableness and the heavy burden facing a party challenging a statute's constitutionality. In that case this Court upheld the reasonableness of a zoning regulation which totally proscribed the plaintiff from using his property for brickmaking, despite the facts that he had purchased his property *before* it was subject to zoning controls and had previously used it for brickmaking. In addition, under the zoning regulation the property's value was decreased by several hundred thousand dollars from its previous value; and the property was not usable for residential purposes.

Under the foregoing tests, the lower court's finding that the Minnesota Pension Act was a reasonable exercise of the state's police power is well founded. The application of the Act arises only when pension benefits have been forfeited as a result of a private pension plan termination or the cessation of operation of a place of employment in Minnesota. Furthermore, it imposes liability on an employer only with respect to employees with 10 or more years of covered service and only to the extent the pension fund is inadequate to cover the benefits promised under the pension plan. *See* Minn. Stat. §§ 181B.02, subds. 6, 10, 11, 12 and 16 and 181B.03-.07 (1976).

Thus, an employer subject to liability would already have received the primary benefits of a significant period of productive service from employees to whom benefits would be payable under the Act. The employer also would have enjoyed the tax benefits for contributions previously made to the pension plan. In preventing the forfeiture of anticipated pension benefits, the Minnesota Pension Act simply insures that the employee receives the deferred compensation he worked for and expected in his retirement years.[35]

Allied's claim that the Minnesota Pension Act is unreasonable because it allegedly imposes actuarially unanticipated lia-

[35] To the extent that the problems of inadequate private pensions were foreseeable, it is noted that the Minnesota Pension Act represents the first attempt by the Minnesota legislature to provide a meaningful response to those problems. Certainly, there is no evidence herein that the employees of Allied had any expectation that they would not receive their full pensions. *See* Craig v. Bemis Company, 517 F.2d 677, 680 (5th Cir. 1975) and Inland Steel Co. v. N.L.R.B., 170 F.2d 247, 249-50 (7th Cir. 1948), *cert. denied in part* 336 U.S. 960 (1949), *aff'd on other grounds* 339 U.S. 382 (1950), where the courts found that both employers and employees regard pensions as deferred compensation, and each *expects* such promised future benefts to attract and keep employees. Therefore, the Minnesota Pension Act simply required Allied to pay the deferred compensation in the form of pension benefits accrued by its employees.

bility on the company is without merit. *See* Appellant's Brief at 3, 12-14. In essence, the company asserts that its contributions to the pension plan were actuarially determined based on the anticipation that only a limited number of participants would ever actually qualify for pension benefits because of the stringent vesting provisions of the Pension Plan. Such a theory is inapposite to plant shut-downs covered by the Minnesota Pension Act. The lower court's conclusions in this regard are well supported by the Special Master's Findings that Allied Steel's actuarial assumptions in planning its pension program were *not* based on the possibility of plant closure. Indeed, the forfeiture of pension benefits resulting from the cessation of operations of a place of employment, such as are covered by the Minnesota Pension Act, may actually provide a windfall to the employer at the expense of the terminated employees. *See* lower court opinion, App. at 6a; *Lucas v. Seagrave Corp.*, 277 F.Supp. 338, 345 (D. Minn. 1967). Accordingly, imposing liability on the employer to prevent the forfeiture of those employees' benefits can hardly be said to be irrational or oppressive. Indeed, applying the tests of reasonableness under *Blaisdell* and *Binford, supra,* the statute's method of protecting employees' earned [36] pensions (particularly since ERISA was not in effect) is reasonably related to its objective of reducing the burdens on employees and the state in general of underfunded pensions.

[36] Allied's statement that the statute unfairly creates emoluments on one party (employees) and burdens on another (employer) is in error. *See* Appellant's Brief at 8. The Act merely provides that if an employer such as Allied elects to terminates a plant or pension plan, it must pay for the pension benefits already *earned* by certain employees. Perhaps Allied simply believes that an employer is entitled to emoluments itself by unilaterally terminating pension plans and thereby depriving employees with up to 20 years' service of their earned deferred compensation. Certainly, it cannot be argued that the Act's establishment of a 10-year vesting period is per se unreasonable, since that same vesting period is used in ERISA. 29 U.S.C. §1053.

Allied's claim that the lower court's decision requires citizens to "anticipate" future legislative enactments again overstates the issue. *See* Appellant's brief at 12. It is well settled by now that, due to the complexities of modern social and economic demands, companies which operate in commonly regulated industries are deemed to know that their activities may become subject to further regulation in the overall public interest. *Cf. City of El Paso v. Simmons*, 379 U.S. 497 (1965); *East New York Savings Bank v. Hahn*, 326 U.S. 230, 232 (1945); and *Minnesota Gas Co. v. Public Service Commission*, 523 F. 2d 581, 583 (8th Cir. 1975), *cert. denied*, 424 U.S. 915 (1976). Despite their modifications of preexisting contracts, collective bargaining agreements, insurance policies and similar private arrangements, laws setting minimum wages, (*West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937)); child labor restrictions (*Sturges v. Burn Mfg. Co.*, 231 U.S. 320 (1913)); and workers' compensation requirements (*N.Y. Central Railroad Co. v. White*, 243 U.S. 188 (1916)) have been sustained against constitutional attacks.

A logical basis for the foregoing cases is the public need to prevent private parties, particularly those in regulated industries enmeshed in diffused public interests, from immunizing themselves by contracts from reasonable statutory regulation necessary to the public welfare. The fact that the Minnesota Pension Act alters the vesting period set up by Allied's pension plan does not, therefore, make it constitutionally unreasonable.

Certainly it is reasonable to extend the protection afforded by the Minnesota Pension Act to previously-accrued benefits, because to apply its protection only to those benefits earned after its passage would have rendered the Act ineffectual until many years after enactment. To limit the application of the Minnesota Pension Act to benefits earned subsequent to enact-

ment would mean that a 20-year employee whose employment was terminated due to a plant shutdown one year after the passage of the Minnesota Pension Act, would still forfeit nineteen years of accrued pension benefits, (assuming the employer's pension fund was inadequate to meet accrued pension benefits) with the state law protecting only one year of benefits. It was not unreasonable for the legislature to choose a method of protection that avoided such a virtually total emasculation of the purpose of the Minnesota Pension Act.[37] Consequently, there is no merit to the contention that the application of the Minnesota Pension Act to benefits accrued prior to its passage is unreasonable.

II. THE MINNESOTA PENSION ACT IS PERMISSIBLE LEGISLATION, DESPITE ALLIED'S CLAIMS OF ITS RETROACTIVITY.

Throughout its brief Allied argues that the Minnesota Pension Act is unconstitutional because it allegedly *retroactively* changes its pension plan. Although Allied presses only a Contract Clause claim herein, it is perhaps helpful to review this Court's views on the validity of retroactive legislation *per se*. The tests for analyzing both Contract Clause and retroactive legislation claims generally are the same. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1976); C. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692 (1960).

Of particular significance to the instant case is *Usury v.*

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[37] Congress chose a similar course in ERISA. For example, the minimum vesting standards apply with respect to years of service prior to enactment. 29 U.S.C.A. § 1053(b)(1) (1975). Similarly, ERISA termination insurance protects benefits accrued prior to passage, and even applies retroactively to some plan terminations that occurred prior to passage. 29 U.S.C.A. §§ 1322 and 1381(b)(2) (1975).

Turner Elkhorn Mining, supra, where in upholding the Black Lung Benefits amendments to the Federal Coal Mine Health and Safety Act of 1969, this Court ruled:

> We find . . . that the imposition of liability for the effects of disabilities bred in the past is justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor—operators and the coal consumers.

428 U.S. at 18.

Despite its requirement that coal mine operators had to pay statutory health benefits based, in part, on irrebuttable presumptions as to disabilities to miners who had left their jobs *before* the black lung amendments were passed, the constitutionality of the statute was upheld. Although the law in *Turner Elkhorn Mining* was challenged as retroactive legislation violative of Due Process rights, this Court noted the similarity of such cases to Contract Clause cases.

Any retroactive effects of the Minnesota Pension Act are likewise no less permissible than those of the statute at issue in *Turner Elkhorn Mining*. The Minnesota Act ultimately provides that if an employer such as Allied decides in the future to terminate a place of business or pension plan, then it must be prepared to insure that all pension benefits accrued by employees with 10 or more years of service under the employer's own pension plan will receive that deferred compensation. Minn. Stat. §§ 181B.02, subds. 6, .03-.06 (1976) at A-91-97. Obviously, the statute has no effect against employers whose pension plans are fully funded or employers who chose not to terminate a plan or place of business. In effect, the employer is the party who largely determines the extent of the Act's retroactivity, by controlling the funding of his pension plan and the decision to terminate it. Unlike minimum wage

laws, for example, the statute does not retroactively change the amount of pension or wage benefits previously established by the employer. And, as noted by the lower court, the statute in the instant case does not have the effect of imposing liability for unanticipated events triggering the payment of benefits under Allied's pension plan, since Allied's actuaries included tables and events *other than* the possibility of plant closure in their calculations. Lower court opinion at A-72-73.

Allied attempts to bolster its claim of the Minnesota Pension Act's retroactivity by comparing it to ERISA. But, certainly, ERISA is no less retroactive than the Minnesota law.

For example, ERISA requires pension plans such as Allied's to meet one of three minimum vesting standards pertinent to the instant case. Under 29 U.S.C. § 1053(a)(2) there are three alternative vesting schedules which must be met: 1) a 100% vesting of benefits for 10 years of employee service; 2) a 5-15 year graduated schedule providing for 25% vesting after 5 years, 50% after 10 years; and 100% after 15 years; or 3) a 50% vesting when an employee's age and years of service equal 45, with 10% additional vesting in each of the following 5 years. Since an employee's service *prior* to the enactment of ERISA must be included in the foregoing schedules, they obviously retroactively modify prior pension agreements, particularly in situations where pension plans were underfunded at the time of ERISA's enactment.

Furthermore, 29 U.S.C. § 1061(2) would have the effect of requiring pension plans such as Allied's to meet ERISA's participation and vesting provisions by December 31, 1975. Again, this requirement would have a retroactive effect on plans such as that at issue herein.

Even in comparison with ERISA, therefore, the Minnesota Pension Act is not unconstitutionally retroactive when analyzed under the principles of *Turner Elkhorn Mining*.

CONCLUSION

The lower court's decision that the Minnesota Pension Act was a reasonable and necessary enactment serving a valid public purpose is fully supported by this Court's holdings in other cases regarding the Contract Clause and retroactive legislation. We respectfully request, therefore, that this Court affirm the judgment entered in this cause by the three-judge federal district court for the District of Minnesota.

Respectfully submitted,

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